Ontario Securities Commission

PERSPECTIVES

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inside...

Spring 2003

FEATURE

Streamlined and Reduced OSC Fees as of March 31, 2003

The OSC's new fee model took effect March 31, 2003, reducing regulatory costs for market participants. The new fee schedule is simpler to understand and also allocates costs more fairly among market participants.

"We are fulfilling our commitment to streamline our fee schedule and charge fees that better reflect the services we provide," OSC Executive Director Charlie Macfarlane said. "Costs will increase for some market participants and decrease for others, but overall, costs for market participants are expected to go down by as much as 20 per cent based on current revenues."

Macfarlane noted that the OSC has already implemented across-the-board fee reductions of more than 20 per cent over the past three years. Previous fee reductions included:

- In June, 2000, a 10 per cent across-the-board fee reduction;
- In August, 1999, a 10 per cent across-the-board fee reduction.

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The OSC Website, www.osc.gov.on.ca includes:
Information on the OSC; Investor Information; Rules and Regulations; Enforcement Information and Market Participants.

Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets.

Howard Wetston to Chair Ontario Energy Board

OSC Vice-Chair Howard Wetston is appointed to the position of Chair of the Ontario Energy Board effective on June 30, 2003, allowing him to complete several important OSC initiatives that he now has under way. Since his appointment as Vice-Chair at the OSC in January 1999, he has made a large and valuable contribution to our success.

It is with mixed feelings that we see Howard taking on this important new role. His thoughtful approach to policy issues, his leadership in the strengthening of our tribunal processes and, not least of all, his quiet sense of fun will be missed. However it is wonderful to see him get this recognition. It's also wonderful to see Ontario putting a strong leader into the OEB because leadership is going to be very important in the coming years in that organization.

As a member of the Ontario and Alberta Bars, Howard Wetston was appointed Queen's Counsel in 1990, and has extensive experience in economic regulation and administrative law. Most recently he was a Judge of the Federal Court of Canada. Our Commissioners and staff all wish Howard the best of luck in his new role.

David Brown, Chair, OSC

New Financings More Than Triple to $21 Billion, Benefiting Businesses in Ontario

Reforms to the regulations governing how enterprises raise capital contributed to a tripling of investments, concludes an Ontario Securities Commission report released April 21, 2003. By focussing investment eligibility on the investors' means rather than on a minimum threshold value for transactions, Ontario saw a jump of thousands more investments in 2002 over the previous year, pumping an additional $15 billion into enterprises in Ontario.

The report concluded that transactions grew from an annual average of 1,287 transactions from 1995 to 1998, with an annual average value of $6.2 billion, to 3,528 transactions worth $21 billion in an 11-month period in 2001-2002. A separate OSC-commissioned study showed that of the total financings, $2.6 billion went to small and medium enterprises in 2002, generating 16,500 jobs in 2002, and forecast to generate a further 19,400 new jobs in 2003 when the lagged impact on employment gains traction. As well, the report suggests an increase of 0.56% in Ontario's GDP for 2002, and a further 0.5% GDP growth for 2003.

In particular, the study reports:
- total trading increased;
- the average size of transactions increased;
- more small and large transactions are noted;
- almost half of the transactions are valued below the previous minimum threshold of $150,000.

Under the new policy, accredited investors include accredited financial institutions and loan or trust corporations, insurance companies, governments, registered charities, securities advisers and dealers. As well, individuals with net financial assets exceeding $1 million in value, or with a net income of more than $200,000 for the two previous years and prospects for similar income in the current year, can be accredited investors.

Financial Authorities Announce Appointments to New Audit Oversight Board

Gordon Thiessen, founding Chair of the Canadian Public Accountability Board (CPAB) and former Governor of the Bank of Canada, and David Brown, Chair of the Council of Governors of the CPAB as well as Chair of the OSC, announced on February 26, 2003 the names of the directors appointed to the Board of the CPAB. These appointments are for an initial term of three years.

The new directors are:
- Raymond Bachand, managing partner and CEO of SECOR (Quebec)
- Bob Bertram, Executive Vice President, Investments, Ontario Teachers Pension Plan Board (Ontario)
- Brian Canfield, Chairman, TELUS (British Columbia)
- Wendy Dobson, Director, The Institute for International Business, University of Toronto's Joseph L. Rotman School of Management (Ontario)
- Ron Gage, Former Chairman and CEO, Ernst & Young (Ontario)
- Jacques Ménard, Chairman of BMO Nesbitt Burns and President of BMO Financial Group (Quebec)

- Ted Newall, Chairman of the Board, Nova Chemicals Ltd. (Alberta)

Completing the Board of 11 directors are the senior executives of 3 provincial CA institutes:

- Gérard Caron, President, CEO and Secretary General of the Ordre des comptables agréés du Québec
- Steve Glover, Executive Director, The Institute of Chartered Accountants of Alberta
- Brian Hunt, President and CEO, The Institute of Chartered Accountants of Ontario

"I am very impressed with the quality of the individuals we have been able to attract to serve on the Board. This highlights the interest and importance attached to this initiative in Canada," said Mr. Thiessen. "The range of expertise and experience brought by the Board members will be invaluable to the CPAB."

"I am delighted with the diversity represented by our Board members, both in terms of their career backgrounds and their regional representation," said Mr. Brown. "This is a very strong team to lead the CPAB in its task of designing and implementing a rigorous system of oversight of the auditing of public companies that will contribute to public confidence in the integrity of financial reporting in Canada."

The CPAB is a new independent organization established to oversee the auditors of public companies. Its mission is to contribute to public confidence in the integrity of financial reporting of Canadian public companies by promoting high quality, independent auditing.

The Council of Governors also includes the former Chair of the Canadian Securities Administrators, Douglas Hyndman; the Chair of the Commission des valeurs mobilières du Québec, Pierre Godin; the federal Superintendent of Financial Institutions, Nicholas Le Pan; and the President and CEO of the Canadian Institute of Chartered Accountants, David Smith.

OSC Publishes Risk-based Criteria to Promote Transparency and Educate Market Participants

On December 19, 2002, the OSC published the risk-based criteria used by staff to determine whether to conduct detailed reviews of market participants and their activities. OSC staff expects that releasing this information will increase the transparency of important regulatory functions and educate market participants about how we evaluate their activities.

The risk criteria are designed to identify and target the most likely instances of non-compliance with securities laws. When an initial review indicates that a sufficient number of the criteria are met, staff will assess the situation as high risk, and proceed to review or investigate it more thoroughly.

"A risk-based approach is a means of focusing our staff's attention on the most important matters," said David Brown, Chair of the OSC. "With finite resources, we can't attempt to do everything and do it well. A selective approach allows us to apply greater scrutiny to the situations most likely to have an adverse impact on the capital markets, while reducing the regulatory burden on those market participants who pose a lower risk."

Complete descriptions of the risk review process and selection criteria are included in *OSC Staff Notice 11-719 - A Risk-based Approach for More Effective Regulation*, available on the OSC website at www.osc.gov.on.ca.

OSC Creates New Investment Funds Branch

Susan Silma has been appointed Director of the newly-created Investment Funds Branch of the OSC, Chair David Brown announced January 29, 2003.

"With her understanding of the industry, her 10 years of experience in investment funds, and her range of contacts, Susan is uniquely positioned to lead a branch that will regulate this important and growing sector of the financial industry," Mr. Brown said. "Susan will be building on the important accomplishments of OSC staff in investment funds regulation. The creation of a new branch for the regulation of investment funds underscores the importance of this sector and the challenges we expect to meet. We look forward to Susan joining our team."

Effective March 3, 2003, Ms Silma assumed leadership of a Branch of approximately 15 employees responsible for all investment funds policy and operational work at the OSC.

Ms Silma, a lawyer/MBA, previously served as General Counsel and Secretary at Working Ventures, a venture capital fund. Prior to that role, she spent 8 years in the private practice of law at a major Toronto law firm, specializing in securities and corporate law. During that time, she completed a two-year secondment at the OSC.

INTERNATIONAL REPORTS

Office of International Affairs Established

For many years, OSC staff have participated actively in a variety of international organizations that work to improve the regulation of financial services throughout the world. These organizations include the International Organization of Securities Commissions (IOSCO), the International Joint Forum of Financial Regulators and the Council of Securities Regulators of the Americas (COSRA).

In the fall of 2002, the OSC established an Office of

International Affairs, led by Susan Wolburgh-Jenah, who now holds the position of Director of International Affairs as well as General Counsel. The International Affairs Office:

- plays a strategic role in the development of the OSC's international regulatory initiatives;
- ensures that the OSC's objectives are furthered through participation in international meetings and organizations;
- supports OSC staff who participate in international organizations; and
- assists in responding to requests by foreign regulators for information about securities regulation and markets in Ontario.

One of the Office's key objectives is to provide OSC staff and stakeholders with information gained through international initiatives, thereby promoting harmonization of domestic and international standards where appropriate.

IOSCO

The International Organization of Securities Commissions (IOSCO) provides a forum for securities regulators around the world to:

- cooperate to promote high standards of regulation;
- exchange information in order to promote the development of domestic markets;
- establish standards and effective surveillance of international securities transactions; and
- promote market integrity through rigorous application of the standards and effective enforcement.

IOSCO's Technical Committee

The OSC belongs to IOSCO's Technical Committee, its key policy-making body. OSC Chair David Brown recently completed a two-year term as Chair of this committee.

OSC staff participate in standing committees and *ad hoc* task forces, and recently have been working on matters such as auditor independence, auditor oversight, the internet, securities analysts and rating agencies. At its February 2003 meeting, the Technical Committee approved for publication four papers, available on IOSCO's website (www.iosco.org).

1. ***General Principles Regarding Disclosure of Management's Discussion & Analysis of Financial Condition and Results of Operations***
   This paper specifies principles that should be considered by issuers in preparing, and by regulators in reviewing, MD&A-type disclosure.

2. ***Regulatory and Investor Protection Issues Arising from the Participation by Retail Investors in (Funds-of) Hedge Funds***
   This paper concludes that, if jurisdictions are willing to permit retail investment in (funds of) hedge funds, it is not necessary to develop new regulatory approaches that diverge significantly from the existing IOSCO principles for regulation of collective investment schemes.

3. ***Indexation: Securities Indices and Index Derivatives***
   This paper outlines the regulatory issues arising from the increased significance of indices, index-led investment strategies and index-related products.

4. ***Performance Presentation Standards For Collective Investment Schemes: Best Practice Standards***
   This consultation paper follows up on work carried out by the Technical Committee in 2002. Comments are requested by May 30, 2003, and can be submitted to:
   IOSCO – General Secretariat
   Attention: Mr. Terry Hart
   Fax: 011 34 91 555 93 68
   email: sofia@oicv.iosco.org

International Joint Forum

The International Joint Forum was established in 1996 by the Basel Committee on Banking Supervision, IOSCO and the International Association of Insurance Supervisors. The OSC and the federal Office of the Superintendent of Financial Institutions (OSFI) participate in the International Joint Forum, together with regulators from twelve other countries. Janet Holmes, Senior Legal Counsel in the International Affairs Office, represents the OSC at meetings of the Joint Forum.

The International Joint Forum's mandate is to study issues of common interest to the three financial sectors and develop guidance or best practices, as appropriate. The International Joint Forum currently has two working groups that are pursuing mandates relating to the supervision of financial services firms:

- One working group is following up on recommendations published by the Joint Forum in April 2001 concerning enhanced public disclosure by regulated firms of their exposure to risk.
- A second working group is pursuing mandates relating to trends in risk aggregation and integration and transfers of operational risk across financial sectors.

Papers published by the International Joint Forum are included in the "Public Documents" section of IOSCO's website. (The April 2001 report referred to above is Document 116.)

COSRA

The Council of Securities Regulators of the Americas (COSRA) was established in 1992 as a forum for securities regulators in North, South and Central America, as well as the Caribbean. It has 31 members in 26 countries. The Chairmanship of COSRA currently is held by the Commission des valeurs mobilières du Québec.

COSRA recently published the following studies and reports:

- ***Delivery versus Payment and Settlement Assurance Procedures in Securities Settlement Systems in the Americas (2002)***; and
- a collection of members' responses to a COSRA questionnaire on corporate governance (2002).

COSRA currently is pursuing mandates relating to small business development and capital formation and clearance and settlement. In connection with COSRA's clearance and settlement project, OSC Vice-Chair Howard Wetston led a seminar for industry and regulators at COSRA's March 2003 meeting in Florida. COSRA public documents can be accessed on-line through the website of the Securities and Exchange Commission of Brazil at www.cvm.gov.br.

For more information about these and other international initiatives, please contact **Susan Wolburgh-Jenah**, General Counsel and Director, International Affairs, (416) 593-8245, swolburghjenah@osc.gov.on.ca, or **Janet Holmes**, Senior Legal Counsel, International Affairs, (416) 593-8282, jholmes@osc.gov.on.ca.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The Canadian Securities Administrators (CSA) is the national organization representing the 13 provincial and territorial securities commissions.

National Registration Database Launched

On March 31, Canada's securities regulators launched a registration system designed to harmonize and improve the registration process. The National Registration Database (NRD) is a web-based system that permits dealers and advisers to file most registration forms electronically. Previously, all forms were paper-based, and their content varied by province.

NRD is an initiative of the CSA and the Investment Dealers Association of Canada (IDA), in which every jurisdiction in Canada except Quebec is participating. More than 1,500 firms and 100,000 individuals were included in the system at its launch date.

Regulators have established a website dedicated to providing NRD-related information, at www.nrd-info.ca.

Stephen Sibold Named New Chair of Canadian Securities Administrators

On April 3, 2003, Alberta Securities Commission Chair Stephen Sibold was named the new Chair of the Canadian Securities Administrators, the national umbrella group representing Canada's securities regulators. Sibold succeeds Douglas Hyndman, the British Columbia Securities Commission Chair who served as head of the CSA for eight years. Donne Smith, Administrator of the New Brunswick Securities Administration Branch, was named Vice-Chair.

"Doug Hyndman has done a tremendous job during his tenure as CSA Chair," Sibold said. "As I step into this role, I am, among other things, focused on continuing the development of uniform legislation for the CSA, and on improving the effectiveness of the CSA."

Sibold's and Smith's appointments were confirmed at a meeting of the Chairs of the 13 provincial and territorial regulators in Toronto on April 3. Both positions have two-year terms.

Guidelines for Capital Accumulation Plans

On April 25, 2003, the Joint Forum of Financial Market Regulators released proposed Guidelines for Capital Accumulation Plans (CAPs) for public comment.

The proposed guidelines describe the rights and responsibilities of CAP sponsors, service providers and CAP members; outline the information and assistance that should be available to CAP members when making investment decisions; and ensure that regardless of the regulatory regime, there is similar regulatory results for all CAP products and services.

CAPs include all employer-sponsored savings plans in which employees are empowered to decide how their savings are invested. They include many defined contribution pension plans as well as, for example, group RRSPs, employer stock purchase plans, and profit sharing plans.

"Once we finalize these guidelines, they will help us provide a similar level of regulatory protection for all investors making similar types of investment decisions," said David Wild, Chair of the Joint Forum. "We have also developed a discussion document that outlines an implementation strategy framework. We encourage comments from plan sponsors, service providers and plan members to help us identify their implementation issues and let us know whether the guidelines will work for them."

The deadline for submissions is August 31, 2003. Copies of the proposed guidelines can be viewed at www.capsa-acor.org or www.ccir-ccrra.org and on many CSA member websites.

The Joint Forum of Financial Market Regulators was founded in 1999 by the Canadian Council of Insurance Regulators (CCIR), the Canadian Association of Pension Supervisory Authorities (CAPSA) and the Canadian Securities Administrators (CSA) and also includes representation from the Canadian Insurance Services Regulatory Organization (CISRO) and the Bureau des services financiers in Quebec.

On-Line Insider Reporting System To Speed Reports, Add Transparency

The System for Electronic Disclosure by Insiders (SEDI) will improve public access and add transparency to insider trade reporting by making information about these insider trades available to investors electronically for all jurisdictions in Canada. SEDI will first bring issuers on-line starting May 5, 2003, then bring insiders on-line starting June 9, 2003. As of June 9, insider trade reports to all Canadian securities jurisdictions will be made via SEDI, eliminating paper-based reporting systems for virtually all insider trades.

By filing through SEDI, an insider will satisfy the securities legislation of all CSA jurisdictions that have insider reporting requirements. Filing deadlines are harmonized in all jurisdictions, generally requiring all insiders to report trades within 10 days of the transaction.

SEDI will introduce the following significant changes to the current system.

Investors

Investors will be able to get insider reports 24 hours a day, seven days a week, at no charge. Investors will be able to access reports such as:

- a weekly summary that displays all transactions filed in SEDI in the preceding week;
- the details of individual transactions by insiders;
- a list of insiders who have registered for each SEDI issuer and the closing balance of all that issuer's securities they hold; and
- an "issuer event history", which includes a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event reported on SEDI.

Insiders

SEDI will provide a higher level of convenience for insiders, who need file only one report to comply with all provincial regulations, and can file 24 hours a day, seven days a week, subject to maintenance requirements. Insiders will not be required to pay any filing fees.

Starting with reports due on or after June 9, 2003, all insiders of "SEDI issuers" will be required to file their insider reports on SEDI. The National Instrument defines SEDI issuers to mean reporting issuers, other than mutual funds, that file disclosure documents in electronic format through SEDAR - essentially all Canadian public companies. The information required to be filed electronically is substantially the same as the information currently filed on paper reports.

Public Companies

SEDI issuers will be required to register and provide information related to their outstanding securities in the period between May 5 and May 30, 2003. All SEDI issuers should ensure that they have filed or updated their SEDAR profile, and must file an accurate and complete SEDI issuer profile supplement on or before May 30, 2003. Any firm that becomes a reporting issuer on or after May 30, 2003 will have three business days to file its SEDI issuer profile supplement.

SEDI issuers will have a new obligation to file a report in SEDI one day after the occurrence of an "issuer event," which includes a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event; this information will be used by insiders to update information about their insider holdings. Reporting issuers that are required to file through SEDAR are being notified of changes to SEDAR's annual filing service charges for the implementation of SEDI.

The filing requirements are listed in National Instrument 55-102 *The System for Electronic Disclosure by Insiders (SEDI)* and in the Canadian Securities Administrators' Staff Notice 55-309 *Launch of the System for Electronic Disclosure by Insiders (SEDI) and Other Insider Reporting Matters*. These documents are available at www.osc.gov.on.ca.

Securities Regulators Review Public Company MD&A

Canadian securities regulators are reviewing how well publicly-traded companies comply with their management discussion and analysis (MD&A) disclosure requirements. The CSA announced March 5, 2003, that its review will identify areas where disclosure is deficient or could be improved.

MD&A disclosure rules require that management discuss the dynamics of the business and analyze the financial statements. Coupled with the financial statements, this information should enable readers to fully assess the issuer's performance, position and future prospects.

"Investors are entitled to a clear, transparent discussion and analysis that guides them through the numbers," said Doug Hyndman, former Chair of the CSA. "The MD&A should give a reader the ability to see the issuer through the eyes of management. It should provide both a historical and a prospective analysis of the issuer's business."

As part of the reviews, regulators will contact companies to discuss disclosure that falls short of the standards and, for serious deficiencies in compliance, could request that documents be refiled. Following the completion of the reviews, the CSA will publish a notice documenting major deficiencies.

Regulators: Insiders Required to Report Equity Monetizations

Canadian securities regulators have published for comment a proposed instrument which will clarify that insiders

must file insider reports for derivative-based transactions, including equity monetization transactions. If adopted, the proposed instrument will ensure that insider transactions involving derivatives which have a similar effect in economic terms to insider trading activities are fully transparent to the market.

"We are acting jointly with regulators in other Canadian jurisdictions to ensure that insider activities involving derivative-based transactions are subject to insider reporting requirements," said Paul Moore, Vice-Chair of the OSC.

The proposed instrument does not prohibit insiders from entering into monetization transactions. It does, however, require that insiders disclose the existence and material terms of such transactions to the public. In this way, the public can determine the significance, if any, of such transactions. If unreported, these transactions shield from public view changes in insiders' true economic positions in their issuers.

The proposed instrument will also require, in certain circumstances, that insiders disclose the existence of monetization arrangements that were entered into before the instrument comes into effect. The instrument will apply to those pre-existing monetization arrangements which continue in force after the effective date of the instrument and which continue to have an impact on an insider's publicly reported holdings.

Comments on *Multilateral Instrument 55-103 (Insider Reporting for Certain Derivative Transactions)*, available on the OSC web site (www.osc.gov.on.ca), are requested by May 31, 2003 by the OSC and other Canadian jurisdictions except British Columbia.

Regulators Propose New Disclosure System for Segregated Funds and Mutual Funds

The Joint Forum of Financial Market Regulators released a consultation paper February 13, 2003 proposing changes to the way information is communicated to consumers of segregated funds and mutual funds about their investment choices. The consultation paper, *Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds*, is the latest Joint Forum initiative directed towards improving and harmonizing financial services regulation across different sectors and jurisdictions.

The regulators propose taking a common sense approach to point of sale disclosure that recognizes advances in technology, and research around consumer needs and behavior. The proposed disclosure regime creates an integrated disclosure system tailored for segregated funds and mutual funds that relies on an access-equals-delivery approach.

The most important information about a fund will be available to consumers in the form of a one or two-page *fund summary document* that sales representatives will use during the sales process *before* a decision is made. Consumers will be told how they can get other information about their fund, including a *foundation document* and the *continuous disclosure record*. These documents, along with a *consumers' guide*, will be available to consumers electronically — and in paper — at all times. The foundation document will define a particular fund by including information about the fund's objectives, strategies and management. The continuous disclosure record will consist of annual and semi-annual financial statements of the fund, as well as periodic discussions of fund performance by management.

The new regime will ultimately mean more and better information for consumers upon which to base their investment decisions. The system takes a layered approach to disclosure and gives each consumer the option to choose how much information he or she needs.

Copies of the consultation paper can be obtained by contacting Stephen Paglia, Senior Policy Analyst, Joint Forum Project Office [phone: (416) 590-7054, e-mail: spaglia@fsco.gov.on.ca]. Alternatively, copies can be obtained online at regulators' websites (e.g. www.osc.gov.on.ca, www.fsco.gov.on.ca).

The Joint Forum was founded in 1999 by the Canadian Council of Insurance Regulators (CCIR), the Canadian Securities Administrators (CSA), and the Canadian Association of Pension Supervisory Authorities (CAPSA), and also includes representation from the Canadian Insurance Services Regulatory Organizations (CISRO) and the Bureau des services financiers in Quebec.

CSA Proposes Blueprint for Uniform Securities Law In Canada

On January 30, 2003, the CSA published a concept proposal for uniform securities laws (USL) in Canada. The proposal envisions a "platform" Uniform Act that would set out fundamental rights, powers and obligations, and Uniform Rules that would set out detailed requirements.

"We're harmonizing the Canadian system of securities regulation within a flexible framework that is able to adapt quickly to evolving market requirements," said Stephen Sibold, Chair of the CSA, Chair of the Alberta Securities Commission, and Chair of the USL Steering Committee.

The proposed framework also incorporates simplified and streamlined regulation in those areas that could be accommodated within the project timeframe. The proposal would streamline inter-jurisdictional registration of firms and individuals, and allow securities regulators to delegate decision-making across all regulatory functions to another securities regulator.

The *CSA Blueprint for a Uniform Securities Act for Canada* is available at the OSC website (www.osc.gov.on.ca).

Canada's Securities Regulators Publish Revised Oil and Gas Disclosure Standards

On January 24, 2003, the CSA released a revised proposal for oil and gas disclosure standards. The disclosure standards are set out in proposed *National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities*. They incorporate reserves evaluation standards and terminology set out in the new industry-developed Canadian Oil and Gas Evaluation Handbook.

The proposal reflects the CSA's emphasis on continuous disclosure of important company information to investors and capital markets. Public oil and gas companies would engage independent reserves evaluators or auditors to report on their oil and gas reserves and related future net revenue estimates. A summary of that report, and other information concerning oil and gas reserves, properties and activities, would be publicly filed each year.

The proposal can be found on several securities commission websites, including www.osc.gov.on.ca. CSA staff plan to have the new standards in place this year. Companies with fiscal years ending on or after December 31, 2003 would report using the new disclosure standards in 2004.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission.

M.C.J.C. Holdings Inc. and Michael Cowpland Hearing Set for May 20, 2003

The OSC scheduled hearings in the matter of M.C.J.C. Holdings Inc. and Michael Cowpland between May 20, 2003 and June 20, 2003. M.C.J.C. is alleged to have committed insider trading. Cowpland is alleged to have authorized as a director the insider trading of M.C.J.C. and misled staff of the Commission.

OSC Approves the Settlement Between Staff and Ronald Mock

On April 9, 2003, a panel of the Commission approved the settlement reached between Staff of the Commission and the respondent Ronald Mock.

Mock was the CEO and President of Phoenix Research and Trading Corporation (Phoenix Canada). During the material time, he was registered with the Commission as an investment counsel and portfolio manager pursuant to the Securities Act. He also was the company's supervisory procedures officer under the Act.

The Commission terminated Mock's registrations and banned him from becoming an officer or director for six years. Pursuant to the settlement, Mock undertook not to apply for registration for five years and not to supervise any registrant for six years. He will write and pass the Partners, Directors and Officers examination and be subject to one year of supervision if he ever becomes registered. The Commission reprimanded Mock and ordered him to pay investigation costs in the amount of $45,000.

Copies of the Commission Order and Settlement Agreement between Staff and Mock are available on the Commission's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, Toronto.

Reasons for Decision in Lydia Diamond, Jurgen von Anhalt, Emilia von Anhalt

The OSC, through its independent tribunal, issued on March 20, 2003 its Reasons in the matter of Lydia Diamond Exploration of Canada Ltd., Jurgen von Anhalt and Emilia von Anhalt. The Commission had earlier ordered that the von Anhalts, subject to certain specific exceptions, cease trading in securities for 12 years, resign all positions held as directors or officers of any issuer, be prohibited from becoming or acting as an officer or director of any issuer for 15 years and be reprimanded. The von Anhalts were also ordered to pay costs of $100,000 each.

The Commission ordered that Lydia cease trading in securities, for three years except as specifically permitted, and be reprimanded. Lydia was also ordered to pay costs of $25,000.

The Commission was satisfied "on clear and cogent facts" that "based on the von Anhalts' conduct in the past, it was likely they would continue to behave in character in the future, with little regard for good business practices and the requirements of securities law."

The Commission found that Lydia was "tainted by the conduct of the von Anhalts" and crafted an order "designed to strike a balance between the interests of the Respondents and the interest of the public."

In the matter of Universal Settlements Inc.

On March 20, 2003, the Ontario Superior Court of Justice (Divisional Court) stayed an order of the Ontario Securities Commission, pending a judicial review application. On January 31, 2003, the Commission had dismissed in its entirety an application brought by USI to revoke an investigation order under section 11 of the Ontario Securities Act and to quash a summons issued pursuant to section 13 of the Act. The judicial review application will be heard by the Court on May 22, 2003.

OSC Approves Settlement Between Staff and Phoenix Research and Trading Corporation

On March 13, 2003, a panel of the Commission approved a settlement reached by Staff of the Commission and the respondent Phoenix Research and Trading Corporation.

Phoenix was registered with the Commission as an investment counsel and portfolio manager pursuant to the *Securities Act*. It was also registered pursuant to the *Commodity Futures Act* as an adviser in the category of commodity trading manager.

Phoenix's fixed income arbitrage activities included the Phoenix Fixed Income Arbitrage Limited Partnership (PFIA LP), a hedge fund. PFIA LP collapsed in early January 2000 when a $3.3 billion U.S. long position in U.S. 6% treasury notes due August 15, 2009 (the UST Notes) caused a significant overdraft position at the Bank of New York. PFIA LP was forced to liquidate its assets. The resulting loss to PFIA LP exceeded US$125 million.

The Commission terminated Phoenix's registrations under the *Securities Act* and the *Commodity Futures Act*. The Commission reprimanded the company and ordered that it pay $50,000 in investigation costs.

Copies of the Commission's Order and Settlement Agreement are available on the Commission's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, Toronto.

OSC Executive Director Approves Settlement with Corporate Directors Over Repeated Late Filings of Financial Statements

On February 28, 2003, Charles Macfarlane, Executive Director, Ontario Securities Commission, approved a settlement agreement reached between Staff of the Commission, Angelo Panza and Camille Ayoub for Panza's and Ayoub's roles in a company's repeated late filings of interim and annual financial statements. Panza and Ayoub were both directors of the Farini Companies Inc., a reporting issuer in Ontario. In addition to serving as directors of Farini, Panza was the company's President, and Ayoub held the office of Secretary.

In the settlement agreement, Panza and Ayoub agree that, in the period between 1995 and the present, Farini failed on 11 occasions to file its interim financial statements within the time period required by the Securities Act. They also agree that Farini failed to file its annual financial statements within the required time period on eight occasions.

As officers and directors of Farini, Panza and Ayoub agree that they "authorized, permitted or acquiesced" in these failures. As a result, Panza and Ayoub have undertaken to resign all positions that they currently hold as officer or director of any issuer, and undertake not to assume any such positions for a period of two years.

"Investors expect that companies will comply with their basic requirements, such as meeting filing deadlines," said John Hughes, Manager of the Commission's Continuous Disclosure team. "This decision reflects our willingness to hold individual directors and officers responsible for failures in this area. It further underscores our view of the importance of prompt corporate filings, even by small companies."

The full text of the settlement agreement is available in the Enforcement section of the OSC's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, Toronto.

OSC and the CVMQ Settlement Agreements with CIBC World Markets Inc.

The OSC has approved a settlement agreement reached between Staff of the OSC and CIBC World Markets Inc. The Commission des valeurs mobilières du Québec (CVMQ) also approved a separate settlement agreement reached between Staff of the CVMQ and CIBC World Markets. The agreements were considered February 27, 2003 at a joint hearing of the Commissions.

By way of sanction, CIBC World Markets agreed and the OSC ordered that CIBC World Markets submit to a review of its conflict disclosure practices by an independent expert. The results of this review will be provided to CIBC World Markets and to the OSC, and the OSC may make further orders requiring compliance with the expert's recommendations.

The OSC reprimanded CIBC World Markets for its conduct, and required it to make a payment of $100,000 towards the costs of the joint investigation of the matter. In approving the settlement agreement, and after reviewing the research reports in question, Commissioner Theresa McLeod stressed the importance of making required disclosure in a type size that is large enough to be easily read by investors, and of separating and highlighting key disclosures, rather than "bury[ing] them in the middle of dense paragraphs" of boilerplate text.

Copies of the Notice of Hearing issued by the OSC, the Statement of Allegations filed by OSC Staff, the Settlement Agreement and the Order made are available at www.osc.gov.on.ca.

Costello Contravened Securities Act

In a decision issued February 18, 2003, the OSC found that Brian Costello's failure to become registered as an adviser contravened section 25(1)(c) of the Ontario Securities Act.

"His failure to make full, complete and conspicuous disclosure of his many conflicts of interest was contrary to the public interest," the three-member panel of the Commission said in its decision.

The panel has requested submissions from counsel for Mr. Costello and OSC Staff on what sanctions, if any, should be made in the public interest. Argument on sanctions was scheduled to be heard March 31, 2003.

Mark Edward Valentine Cease Trade Order Extended

The OSC extended its temporary cease trade order against Mark Edward Valentine on February 17, 2003. The new order suspends Mark Valentine's registration and prohibits him from trading in securities, with certain exceptions, until at least July 31, 2003.

In reasons for decision released with the order, the Commission ruled that Mr. Valentine breached the previous cease trade order by trading in futures contracts in July of 2002. Copies of the Commission's order and reasons for decision, as well as the Notice of Hearing and Statement of Allegations are available on the Commission's website.

OSC Proceedings in ATI Technologies, K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Allan Rae and Sally Daub

The OSC announced January 16, 2003 that it has commenced proceedings against ATI Technologies Inc., K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Alan Rae and Sally Daub.

ATI is alleged to have failed to disclose material information on a timely basis and to have made a misleading statement to Staff.

K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, and Alan Rae are alleged to have committed insider trading contrary to Ontario securities law, resulting in more than $7.9 million in profits or avoided losses and triggering significant tax benefits. Staff of the OSC have given notice of the intent to seek disgorgement of any amounts attained as a result of non-compliance with Ontario's securities law. In addition, Sally Daub is alleged to have made a misleading statement to staff.

The first appearance, initially scheduled for February 14, 2003, was adjourned to a date to be agreed to by counsel. Copies of the Notice of Hearing and Statement of Allegations are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

RECENT SPEECH

Excerpts from a keynote address by David A. Brown, Chair, Ontario Securities Commission to the Law Society of Upper Canada (Toronto, March 19, 2003)

There is little doubt that the crisis in confidence that has roiled U.S. markets in the wake of Enron, WorldCom, Global Crossing and other failures has spilled across the border into Canada. U.S. governmental and regulatory authorities have taken swift measures to correct the systemic failures exposed by these scandals. But we have essentially the same market system here in Canada, and we've had our own share of failures.

What is to be Canada's response?

I believe that the measures introduced in Bill 198 will greatly assist us in restoring investor confidence in our capital markets.

I congratulate Finance Minister Janet Ecker for showing leadership and introducing this legislation. I should also acknowledge the work done by Purdy Crawford and the Five Year Review Committee, which is wrapping up its work and will soon submit its final report to the Minister. As you know, the amendments to the Securities Act introduced in Bill 198 were drawn largely from the work of the Five Year Review Committee. Consequently, all of these measures have benefitted from a great deal of consultation and careful consideration.

I want to speak to you today more specifically about the role that increased regulatory sanctions and criminal penalties play in restoring investor confidence…I hope that my remarks will help to put into context some of our thinking as we move forward in this important area.

New Violations

New violations in the Act include: securities fraud, market manipulation and making a misleading or untrue statement. Incredibly, these activities are not specifically prohibited in the Ontario Act. Market manipulation is an offense under the B.C., Alberta and Saskatchewan statutes and is a securities law offense both in the U.S. and the U.K. The B.C. and Alberta Acts also specifically prohibit fraud. Although we have the authority to deal with this activity under our broad public interest jurisdiction, it is so fundamental that it should be enshrined in the Act.

Administrative Sanctions

Bill 198 gives the Commission itself two new administrative sanctions: the authority to levy an administrative penalty of up to $1 million; and the ability to order disgorgement of profits made as the result of a violation of Ontario securities law. These will be added to the arsenal of sanctions that can be imposed in a section 127 proceeding. Much has been said about the extent of our powers under this section. Justice Laskin made it clear in the Asbestos decision that the purpose of our public interest jurisdiction is neither remedial nor punitive - it is protective and preventative - intended to prevent likely future harm to Ontario's capital markets. In upholding Justice Laskin's decision, Justice Iacobucci noted that it is important to recognize that section 127 is a regulatory provision and that the objective of regulatory legislation is the protection of societal interests, not the punishment of an individual's moral faults. He stated:

"... the purpose of an order under s.127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets."

Some practitioners have expressed a concern that the power to impose a fine crosses the line from preventative to punitive - thereby rendering it unconstitutional. I disagree. To put it in Justice Iacobucci's terms, the issue will turn on whether the administrative penalty is seen as punishment for the individual's moral faults or whether it can be seen as a sanction imposed to restrain future conduct. Properly applied, I believe the power will be construed to be preventative.

The authority to order disgorgement is a first for a Canadian securities regulator. The principle behind it is compelling: why should a person or company be allowed to keep monies that were made as a result of a breach of the Securities Act? This is a progressive step that puts us on a par with the U.S. But the devil is in the details.

How will disgorgement work in practice? How will the amount of profit be determined? What guidelines will be in place to decide who gets what? Candidly, we still have a great deal of work to determine how best to implement this measure. The SEC has enacted rules of practice governing their determination of entitlements to disgorged monies which we are examining for ideas. We will also work closely with you, with other market participants and with Ministry officials to provide as much clarity as possible.

New Penalties for the Courts

The Securities Act does permit the courts to assess remedial or punitive penalties, notwithstanding the limitations discussed above on the Commission's direct powers of sanction. As Justice Iacobucci put it in the Asbestos appeal, "The

enforcement techniques in the Act span a broad spectrum from purely regulatory or administrative sanctions to serious criminal penalties."

Here, punishment and deterrence are legitimate objectives. The Five Year Review Committee found that the general penalty provisions of the Act hadn't been changed for 15 years. It also found that potential prison terms in other jurisdictions were much longer that ours - ranging from three years to 10 years. The Committee concluded that the maximum fine under the general penalty provision should be sufficiently large to be viewed as more than simply a licensing fee. Thus, the Committee recommended increases in both the fines and jail terms that can be levied by a court.

Under Bill 198, the maximum court-imposed fine rises from $1 million to $5 million, while the maximum jail term increases from two years to five years less a day. For insider trading cases, the court continues to be allowed to impose a fine of up to three times the profit made or loss avoided.

With Bill 198, the Legislature has sent a strong signal to the courts that stiffer sentences are needed for violations of the Securities Act. This signal from our lawmakers is needed. Courts still view a proceeding under the Securities Act as an administrative proceeding, notwithstanding the provision of criminal penalties. As a result, even for the most egregious conduct, penalties are often set at or below the mid-point in the specified range. If the courts respond positively to this signal from our legislators, we should have a very clear deterrent message to potential miscreants.

Federal Finance Minister John Manley announced in his recent budget that increased federal resources will be made available to combat criminal activity in our capital markets. There are two components to this funding. The first is for investigations. New funding will be earmarked for the RCMP to hire and train sophisticated investigators with the knowledge to identify and investigate complex securities fraud. Among other things, this funding will allow us to expand our existing successful partnership with the RCMP. The second element is to increase resources for criminal prosecutions. The federal government has not yet announced how much more aggressive it is prepared to be in taking securities-related cases to court. But even with a greater commitment, it will take some time for the feds to ramp up their resources.

Although these new signs are positive, it will take some time before some fundamental questions are answered. For example: Is there a greater desire among municipal, provincial and federal police to make securities-related crime a higher investigative priority? If so, is there a will at the provincial and federal level to prosecute these cases? Is there a role for OSC litigators to play in prosecuting criminal code cases?

These are all questions that we will be wrestling with during the coming months, and I look forward to hearing your views on these matters.

(Streamlined and Reduced OSC Fees, continued from page 1)

"Ontario Finance Minister Janet Ecker has approved our new fee proposal, which will bring us to a total reduction of up to 40 per cent," he said. "These combined fee reductions will result in the industry saving in excess of $40 million per year in fees payable to the OSC."

"All market participants have benefited from reduced fees during the past three years," said Macfarlane. "The element we are adding to the reductions now is a reformed fee schedule that fairly allocates costs based on services used." To accomplish this objective, the new schedule incorporates two types of fees:

1. Participation Fees reflect the benefit derived by market participants from taking part in Ontario's capital markets. All market participants, including reporting issuers, registrants and mutual fund managers, will be required to pay an annual participation fee. The participation fees are based on a measure of the size of the market participant, which is intended to serve as a proxy for the market participant's use of the capital markets.

2. Activity Fees reflect the direct cost for activities provided by OSC staff at the request of the market participant. Examples include processing registration documents, or reviewing prospectuses and applications for discretionary relief.

The OSC is commited to re-evaluating the fee schedule every three years, Macfarlane said. "We expect to operate within budget, but if there is a surplus after three years, fees will be reduced accordingly for the next three-year period."

The new fee model was developed with extensive industry cooperation, including focus groups with reporting issuers, dealers, advisers, mutual fund managers, the Investment Dealers Association of Canada and the Investment Funds Institute of Canada.

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Information on the OSC, Investor Information,
Rules and Regulations, Enforcement Information
and Market Participants.